

SHB 1788 - S AMD 436
By Senator Roach

ADOPTED 04/26/2003

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 39.10 RCW
4 to read as follows:

5 (1) Public bodies may use a job order contract for public works
6 projects when:

7 (a) A public body has made a determination that the use of job
8 order contracts will benefit the public by providing an effective means
9 of reducing the total lead-time and cost for public works projects or
10 repair required at public facilities through the use of unit price
11 books and work orders by eliminating time-consuming, costly aspects of
12 the traditional public works process, which require separate
13 contracting actions for each small project;

14 (b) The work order to be issued for a particular project does not
15 exceed two hundred thousand dollars;

16 (c) Less than twenty percent of the dollar value of the work order
17 consists of items of work not contained in the unit price book; and

18 (d) At least eighty percent of the job order contract must be
19 subcontracted to entities other than the job order contractor.

20 (2) Public bodies shall award job order contracts through a
21 competitive process utilizing public requests for proposals. Public
22 bodies shall make an effort to solicit proposals from a certified
23 minority or certified woman-owned contractor to the extent permitted by
24 the Washington state civil rights act, RCW 49.60.400. The public body
25 shall publish, at least once in a legal newspaper of general
26 circulation published in or as near as possible to that part of the
27 county in which the public works will be done, a request for proposals
28 for job order contracts and the availability and location of the
29 request for proposal documents. The public body shall ensure that the
30 request for proposal documents at a minimum includes:

1 (a) A detailed description of the scope of the job order contract
2 including performance, technical requirements and specifications,
3 functional and operational elements, minimum and maximum work order
4 amounts, duration of the contract, and options to extend the job order
5 contract;

6 (b) The reasons for using job order contracts;

7 (c) A description of the qualifications required of the proposer;

8 (d) The identity of the specific unit price book to be used;

9 (e) The minimum contracted amount committed to the selected job
10 order contractor;

11 (f) A description of the process the public body will use to
12 evaluate qualifications and proposals, including evaluation factors and
13 the relative weight of factors. The public body shall ensure that
14 evaluation factors include, but are not limited to, proposal price and
15 the ability of the proposer to perform the job order contract. In
16 evaluating the ability of the proposer to perform the job order
17 contract, the public body may consider: The ability of the
18 professional personnel who will work on the job order contract; past
19 performance on similar contracts; ability to meet time and budget
20 requirements; ability to provide a performance and payment bond for the
21 job order contract; recent, current, and projected work loads of the
22 proposer; location; and the concept of the proposal;

23 (g) The form of the contract to be awarded;

24 (h) The method for pricing renewals of or extensions to the job
25 order contract;

26 (i) A notice that the proposals are subject to the provisions of
27 RCW 39.10.100; and

28 (j) Other information relevant to the project.

29 (3) A public body shall establish a committee to evaluate the
30 proposals. After the committee has selected the most qualified
31 finalists, the finalists shall submit final proposals, including sealed
32 bids based upon the identified unit price book. Such bids may be in
33 the form of coefficient markups from listed price book costs. The
34 public body shall award the contract to the firm submitting the highest
35 scored final proposal using the evaluation factors and the relative
36 weight of factors published in the public request for proposals.

1 (4) The public body shall provide a protest period of at least ten
2 business days following the day of the announcement of the apparent
3 successful proposal to allow a protester to file a detailed statement
4 of the grounds of the protest. The public body shall promptly make a
5 determination on the merits of the protest and provide to all proposers
6 a written decision of denial or acceptance of the protest. The public
7 body shall not execute the contract until two business days following
8 the public body's decision on the protest.

9 (5) The public body shall issue no work orders until it has
10 approved, in consultation with the office of minority and women's
11 business enterprises or the equivalent local agency, a plan prepared by
12 the job order contractor that equitably spreads certified women and
13 minority business enterprise subcontracting opportunities, to the
14 extent permitted by the Washington state civil rights act, RCW
15 49.60.400, among the various subcontract disciplines.

16 (6) Job order contracts may be executed for an initial contract
17 term of not to exceed two years, with the option of extending or
18 renewing the job order contract for one year. All extensions or
19 renewals must be priced as provided in the request for proposals. The
20 extension or renewal must be mutually agreed to by the public body and
21 the job order contractor.

22 (7) The maximum total dollar amount that may be awarded under a job
23 order contract shall not exceed three million dollars in the first year
24 of the job order contract, five million dollars over the first two
25 years of the job order contract, and, if extended or renewed, eight
26 million dollars over the three years of the job order contract.

27 (8) For each job order contract, public bodies shall not issue more
28 than two work orders equal to or greater than one hundred fifty
29 thousand dollars in a twelve-month contract performance period.

30 (9) All work orders issued for the same project shall be treated as
31 a single work order for purposes of the one hundred fifty thousand
32 dollar limit on work orders in subsection (8) of this section and the
33 two hundred thousand dollar limit on work orders in subsection (1)(b)
34 of this section.

35 (10) Any new permanent, enclosed building space constructed under
36 a work order shall not exceed two thousand gross square feet.

1 (11) Each public body may have no more than two job order contracts
2 in effect at any one time.

3 (12) For purposes of chapters 39.08, 39.12, 39.76, and 60.28 RCW,
4 each work order issued shall be treated as a separate contract. The
5 alternate filing provisions of RCW 39.12.040(2) shall apply to each
6 work order that otherwise meets the eligibility requirements of RCW
7 39.12.040(2).

8 (13) The requirements of RCW 39.30.060 do not apply to requests for
9 proposals for job order contracts.

10 (14) Job order contractors shall pay prevailing wages for all work
11 that would otherwise be subject to the requirements of chapter 39.12
12 RCW. Prevailing wages for all work performed pursuant to each work
13 order must be the rates in effect at the time the individual work order
14 is issued.

15 (15) If, in the initial contract term, the public body, at no fault
16 of the job order contractor, fails to issue the minimum amount of work
17 orders stated in the public request for proposals, the public body
18 shall pay the contractor an amount equal to the difference between the
19 minimum work order amount and the actual total of the work orders
20 issued multiplied by an appropriate percentage for overhead and profit
21 contained in the general conditions for Washington state facility
22 construction. This will be the contractor's sole remedy.

23 (16) All job order contracts awarded under this section must be
24 executed before July 1, 2007, however the job order contract may be
25 extended or renewed as provided for in this section.

26 (17) For purposes of this section, "public body" includes any
27 school district.

28 **Sec. 2.** RCW 39.10.020 and 2001 c 328 s 1 are each amended to read
29 as follows:

30 Unless the context clearly requires otherwise, the definitions in
31 this section apply throughout this chapter.

32 (1) "Alternative public works contracting procedure" means the
33 design-build and the general contractor/construction manager
34 contracting procedures authorized in RCW 39.10.051 and 39.10.061,
35 respectively.

1 (2) "Public body" means the state department of general
2 administration; the University of Washington; Washington State
3 University; every city with a population greater than seventy thousand
4 and any public authority chartered by such city under RCW 35.21.730
5 through 35.21.755 and specifically authorized as provided in RCW
6 39.10.120(4); every county with a population greater than four hundred
7 fifty thousand; every port district with total revenues greater than
8 fifteen million dollars per year; every public utility district with
9 revenues from energy sales greater than twenty-three million dollars
10 per year; and those school districts proposing projects that are
11 considered and approved by the school district project review board
12 under RCW 39.10.115.

13 (3) "Public works project" means any work for a public body within
14 the definition of the term public work in RCW 39.04.010.

15 (4) "Job order contract" means a contract between a public body or
16 any school district and a registered or licensed contractor in which
17 the contractor agrees to a fixed period, indefinite quantity delivery
18 order contract which provides for the use of negotiated, definitive
19 work orders for public works as defined in RCW 39.04.010.

20 (5) "Job order contractor" means a registered or licensed
21 contractor awarded a job order contract.

22 (6) "Unit price book" means a book containing specific prices,
23 based on generally accepted industry standards and information, where
24 available, for various items of work to be performed by the job order
25 contractor. The prices may include: All the costs of materials;
26 labor; equipment; overhead, including bonding costs; and profit for
27 performing the items of work. The unit prices for labor must be at the
28 rates in effect at the time the individual work order is issued.

29 (7) "Work order" means an order issued for a definite scope of work
30 to be performed pursuant to a job order contract.

31 **Sec. 3.** RCW 39.10.067 and 2002 c 46 s 3 are each amended to read
32 as follows:

33 In addition to the projects authorized in RCW 39.10.061, public
34 bodies may also use the general contractor/construction manager
35 contracting procedure for the construction of school district capital
36 demonstration projects, subject to the following conditions:

1 (1) The project must receive approval from the school district
2 project review board established under RCW 39.10.115.

3 (2) The school district project review board may not authorize more
4 than ~~((ten))~~ sixteen demonstration projects valued over ~~((five))~~ ten
5 million dollars~~(, of which at least two demonstration projects must be~~
6 ~~valued between five and ten million dollars))~~.

7 (3) The school district project review board may not authorize more
8 than two demonstration projects valued between five and ten million
9 dollars and the authorization for the two demonstration projects shall
10 expire upon the completion of the two projects.

11 **Sec. 4.** RCW 39.08.030 and 1989 c 58 s 1 are each amended to read
12 as follows:

13 (1) The bond mentioned in RCW 39.08.010 shall be in an amount equal
14 to the full contract price agreed to be paid for such work or
15 improvement, except under subsection (2) of this section, and shall be
16 to the state of Washington, except as otherwise provided in RCW
17 39.08.100, and except in cases of cities and towns, in which cases such
18 municipalities may by general ordinance fix and determine the amount of
19 such bond and to whom such bond shall run: PROVIDED, The same shall
20 not be for a less amount than twenty-five percent of the contract price
21 of any such improvement, and may designate that the same shall be
22 payable to such city, and not to the state of Washington, and all such
23 persons mentioned in RCW 39.08.010 shall have a right of action in his,
24 her, or their own name or names on such bond for work done by such
25 laborers or mechanics, and for materials furnished or provisions and
26 goods supplied and furnished in the prosecution of such work, or the
27 making of such improvements: PROVIDED, That such persons shall not
28 have any right of action on such bond for any sum whatever, unless
29 within thirty days from and after the completion of the contract with
30 an acceptance of the work by the affirmative action of the board,
31 council, commission, trustees, officer, or body acting for the state,
32 county or municipality, or other public body, city, town or district,
33 the laborer, mechanic or subcontractor, or materialman, or person
34 claiming to have supplied materials, provisions or goods for the
35 prosecution of such work, or the making of such improvement, shall
36 present to and file with such board, council, commission, trustees or

1 body acting for the state, county or municipality, or other public
2 body, city, town or district, a notice in writing in substance as
3 follows:

4 To (here insert the name of the state, county or
5 municipality or other public body, city, town or district):

6 Notice is hereby given that the undersigned (here
7 insert the name of the laborer, mechanic or subcontractor,
8 or materialman, or person claiming to have furnished
9 labor, materials or provisions for or upon such contract or
10 work) has a claim in the sum of dollars (here insert
11 the amount) against the bond taken from (here
12 insert the name of the principal and surety or sureties upon
13 such bond) for the work of (here insert a brief
14 mention or description of the work concerning which said
15 bond was taken).

16 (here to be signed)

17 Such notice shall be signed by the person or corporation making the
18 claim or giving the notice, and said notice, after being presented and
19 filed, shall be a public record open to inspection by any person, and
20 in any suit or action brought against such surety or sureties by any
21 such person or corporation to recover for any of the items hereinbefore
22 specified, the claimant shall be entitled to recover in addition to all
23 other costs, attorney's fees in such sum as the court shall adjudge
24 reasonable: PROVIDED, HOWEVER, That no attorney's fees shall be
25 allowed in any suit or action brought or instituted before the
26 expiration of thirty days following the date of filing of the notice
27 hereinbefore mentioned: PROVIDED FURTHER, That any city may avail
28 itself of the provisions of RCW 39.08.010 through 39.08.030,
29 notwithstanding any charter provisions in conflict herewith: AND
30 PROVIDED FURTHER, That any city or town may impose any other or further
31 conditions and obligations in such bond as may be deemed necessary for
32 its proper protection in the fulfillment of the terms of the contract
33 secured thereby, and not in conflict herewith.

34 (2) Under the job order contracting procedure described in section
35 1 of this act, bonds will be in an amount not less than the dollar
36 value of all open work orders.

1 **Sec. 5.** RCW 39.30.060 and 2002 c 163 s 2 are each amended to read
2 as follows:

3 (1) Every invitation to bid on a prime contract that is expected to
4 cost one million dollars or more for the construction, alteration, or
5 repair of any public building or public work of the state or a state
6 agency or municipality as defined under RCW 39.04.010 or an institution
7 of higher education as defined under RCW 28B.10.016 shall require each
8 prime contract bidder to submit as part of the bid, or within one hour
9 after the published bid submittal time, the names of the subcontractors
10 with whom the bidder, if awarded the contract, will subcontract for
11 performance of the work of: HVAC (heating, ventilation, and air
12 conditioning); plumbing as described in chapter 18.106 RCW; and
13 electrical as described in chapter 19.28 RCW, or to name itself for the
14 work. The prime contract bidder shall not list more than one
15 subcontractor for each category of work identified, unless
16 subcontractors vary with bid alternates, in which case the prime
17 contract bidder must indicate which subcontractor will be used for
18 which alternate. Failure of the prime contract bidder to submit as
19 part of the bid the names of such subcontractors or to name itself to
20 perform such work or the naming of two or more subcontractors to
21 perform the same work shall render the prime contract bidder's bid
22 nonresponsive and, therefore, void.

23 (2) Substitution of a listed subcontractor in furtherance of bid
24 shopping or bid peddling before or after the award of the prime
25 contract is prohibited and the originally listed subcontractor is
26 entitled to recover monetary damages from the prime contract bidder who
27 executed a contract with the public entity and the substituted
28 subcontractor but not from the public entity inviting the bid. It is
29 the original subcontractor's burden to prove by a preponderance of the
30 evidence that bid shopping or bid peddling occurred. Substitution of
31 a listed subcontractor may be made by the prime contractor for the
32 following reasons:

33 (a) Refusal of the listed subcontractor to sign a contract with the
34 prime contractor;

35 (b) Bankruptcy or insolvency of the listed subcontractor;

36 (c) Inability of the listed subcontractor to perform the
37 requirements of the proposed contract or the project;

1 (d) Inability of the listed subcontractor to obtain the necessary
2 license, bonding, insurance, or other statutory requirements to perform
3 the work detailed in the contract; or

4 (e) The listed subcontractor is barred from participating in the
5 project as a result of a court order or summary judgment.

6 (3) The requirement of this section to name the prime contract
7 bidder's proposed HVAC, plumbing, and electrical subcontractors applies
8 only to proposed HVAC, plumbing, and electrical subcontractors who will
9 contract directly with the prime contract bidder submitting the bid to
10 the public entity.

11 (4) This section does not apply to job order contract requests for
12 proposals under section 1 of this act.

13 NEW SECTION. **Sec. 6.** A new section is added to chapter 39.12 RCW
14 to read as follows:

15 Job order contracts under section 1 of this act must pay prevailing
16 wages for all work that would otherwise be subject to the requirements
17 of this chapter. Prevailing wages for all work performed pursuant to
18 each work order must be the rates in effect at the time the individual
19 work order is issued.

20 **Sec. 7.** RCW 60.28.011 and 2000 c 185 s 1 are each amended to read
21 as follows:

22 (1) Public improvement contracts shall provide, and public bodies
23 shall reserve, a contract retainage not to exceed five percent of the
24 moneys earned by the contractor as a trust fund for the protection and
25 payment of: (a) The claims of any person arising under the contract;
26 and (b) the state with respect to taxes imposed pursuant to Title 82
27 RCW which may be due from such contractor.

28 (2) Every person performing labor or furnishing supplies toward the
29 completion of a public improvement contract shall have a lien upon
30 moneys reserved by a public body under the provisions of a public
31 improvement contract. However, the notice of the lien of the claimant
32 shall be given within forty-five days of completion of the contract
33 work, and in the manner provided in RCW 39.08.030.

34 (3) The contractor at any time may request the contract retainage

1 be reduced to one hundred percent of the value of the work remaining on
2 the project.

3 (a) After completion of all contract work other than landscaping,
4 the contractor may request that the public body release and pay in full
5 the amounts retained during the performance of the contract, and sixty
6 days thereafter the public body must release and pay in full the
7 amounts retained (other than continuing retention of five percent of
8 the moneys earned for landscaping) subject to the provisions of
9 chapters 39.12 and 60.28 RCW.

10 (b) Sixty days after completion of all contract work the public
11 body must release and pay in full the amounts retained during the
12 performance of the contract subject to the provisions of chapters 39.12
13 and 60.28 RCW.

14 (4) The moneys reserved by a public body under the provisions of a
15 public improvement contract, at the option of the contractor, shall be:

16 (a) Retained in a fund by the public body;

17 (b) Deposited by the public body in an interest bearing account in
18 a bank, mutual savings bank, or savings and loan association. Interest
19 on moneys reserved by a public body under the provision of a public
20 improvement contract shall be paid to the contractor;

21 (c) Placed in escrow with a bank or trust company by the public
22 body. When the moneys reserved are placed in escrow, the public body
23 shall issue a check representing the sum of the moneys reserved payable
24 to the bank or trust company and the contractor jointly. This check
25 shall be converted into bonds and securities chosen by the contractor
26 and approved by the public body and the bonds and securities shall be
27 held in escrow. Interest on the bonds and securities shall be paid to
28 the contractor as the interest accrues.

29 (5) The contractor or subcontractor may withhold payment of not
30 more than five percent from the moneys earned by any subcontractor or
31 sub-subcontractor or supplier contracted with by the contractor to
32 provide labor, materials, or equipment to the public project. Whenever
33 the contractor or subcontractor reserves funds earned by a
34 subcontractor or sub-subcontractor or supplier, the contractor or
35 subcontractor shall pay interest to the subcontractor or sub-
36 subcontractor or supplier at a rate equal to that received by the
37 contractor or subcontractor from reserved funds.

1 (6) A contractor may submit a bond for all or any portion of the
2 contract retainage in a form acceptable to the public body and from a
3 bonding company meeting standards established by the public body. The
4 public body shall accept a bond meeting these requirements unless the
5 public body can demonstrate good cause for refusing to accept it. This
6 bond and any proceeds therefrom are subject to all claims and liens and
7 in the same manner and priority as set forth for retained percentages
8 in this chapter. The public body shall release the bonded portion of
9 the retained funds to the contractor within thirty days of accepting
10 the bond from the contractor. Whenever a public body accepts a bond in
11 lieu of retained funds from a contractor, the contractor shall accept
12 like bonds from any subcontractors or suppliers from which the
13 contractor has retained funds. The contractor shall then release the
14 funds retained from the subcontractor or supplier to the subcontractor
15 or supplier within thirty days of accepting the bond from the
16 subcontractor or supplier.

17 (7) If the public body administering a contract, after a
18 substantial portion of the work has been completed, finds that an
19 unreasonable delay will occur in the completion of the remaining
20 portion of the contract for any reason not the result of a breach
21 thereof, it may, if the contractor agrees, delete from the contract the
22 remaining work and accept as final the improvement at the stage of
23 completion then attained and make payment in proportion to the amount
24 of the work accomplished and in this case any amounts retained and
25 accumulated under this section shall be held for a period of sixty days
26 following the completion. In the event that the work is terminated
27 before final completion as provided in this section, the public body
28 may thereafter enter into a new contract with the same contractor to
29 perform the remaining work or improvement for an amount equal to or
30 less than the cost of the remaining work as was provided for in the
31 original contract without advertisement or bid. The provisions of this
32 chapter are exclusive and shall supersede all provisions and
33 regulations in conflict herewith.

34 (8) Whenever the department of transportation has contracted for
35 the construction of two or more ferry vessels, sixty days after
36 completion of all contract work on each ferry vessel, the department
37 must release and pay in full the amounts retained in connection with

1 the construction of the vessel subject to the provisions of RCW
2 60.28.020 and chapter 39.12 RCW. However, the department of
3 transportation may at its discretion condition the release of funds
4 retained in connection with the completed ferry upon the contractor
5 delivering a good and sufficient bond with two or more sureties, or
6 with a surety company, in the amount of the retained funds to be
7 released to the contractor, conditioned that no taxes shall be
8 certified or claims filed for work on the ferry after a period of sixty
9 days following completion of the ferry; and if taxes are certified or
10 claims filed, recovery may be had on the bond by the department of
11 revenue and the materialmen and laborers filing claims.

12 (9) Except as provided in subsection (1) of this section,
13 reservation by a public body for any purpose from the moneys earned by
14 a contractor by fulfilling its responsibilities under public
15 improvement contracts is prohibited.

16 (10) Contracts on projects funded in whole or in part by farmers
17 home administration and subject to farmers home administration
18 regulations are not subject to subsections (1) through (9) of this
19 section.

20 (11) This subsection applies only to a public body that has
21 contracted for the construction of a facility using the general
22 contractor/construction manager procedure, as defined under RCW
23 (~~39.10.060~~) 39.10.061. If the work performed by a subcontractor on
24 the project has been completed within the first half of the time
25 provided in the general contractor/construction manager contract for
26 completing the work, the public body may accept the completion of the
27 subcontract. The public body must give public notice of this
28 acceptance. After a forty-five day period for giving notice of liens,
29 and compliance with the retainage release procedures in RCW 60.28.021,
30 the public body may release that portion of the retained funds
31 associated with the subcontract. Claims against the retained funds
32 after the forty-five day period are not valid.

33 (12) Unless the context clearly requires otherwise, the definitions
34 in this subsection apply throughout this section.

35 (a) "Contract retainage" means an amount reserved by a public body
36 from the moneys earned by a person under a public improvement contract.

1 (b) "Person" means a person or persons, mechanic, subcontractor, or
2 materialperson who performs labor or provides materials for a public
3 improvement contract, and any other person who supplies the person with
4 provisions or supplies for the carrying on of a public improvement
5 contract.

6 (c) "Public body" means the state, or a county, city, town,
7 district, board, or other public body.

8 (d) "Public improvement contract" means a contract for public
9 improvements or work, other than for professional services, or a work
10 order as defined in RCW 39.10.020.

11 **Sec. 8.** RCW 39.10.902 and 2002 c 46 s 4 are each amended to read
12 as follows:

13 The following acts or parts of acts, as now existing or hereafter
14 amended, are each repealed, effective July 1, 2007:

15 (1) RCW 39.10.010 and 1994 c 132 s 1;

16 (2) RCW 39.10.020 and 2003 c ... s 2 (section 2 of this act), 2001
17 c 328 s 1, 2000 c 209 s 1, 1997 c 376 s 1, & 1994 c 132 s 2;

18 (3) RCW 39.10.030 and 1997 c 376 s 2 & 1994 c 132 s 3;

19 (4) RCW 39.10.040 and 1994 c 132 s 4;

20 (5) RCW 39.10.051 and 2002 c 46 s 1 & 2001 c 328 s 2;

21 (6) RCW 39.10.061 and 2002 c 46 s 2 & 2001 c 328 s 3;

22 (7) RCW 39.10.065 and 1997 c 376 s 5;

23 (8) RCW 39.10.067 and 2003 c ... s 3 (section 3 of this act), 2002
24 c 46 s 3, & 2000 c 209 s 3;

25 (9) RCW 39.10.070 and 1994 c 132 s 7;

26 (10) RCW 39.10.080 and 1994 c 132 s 8;

27 (11) RCW 39.10.090 and 1994 c 132 s 9;

28 (12) RCW 39.10.100 and 1994 c 132 s 10;

29 (13) RCW 39.10.115 and 2001 c 328 s 4 & 2000 c 209 s 4;

30 (14) RCW 39.10.900 and 1994 c 132 s 13; (~~and~~)

31 (15) RCW 39.10.901 and 1994 c 132 s 14; and

32 (16) RCW 39.10.-- and 2003 c ... s 1 (section 1 of this act).

33 NEW SECTION. **Sec. 9.** A new section is added to chapter 39.12 RCW
34 to read as follows:

1 The following acts or parts of acts, as now existing or hereafter
2 amended, are each repealed, effective July 1, 2007:
3 RCW 39.12.-- and 2003 c . . . s 6 (section 6 of this act)."

SHB 1788 - S AMD **436**
By Senator Roach

ADOPTED 04/26/2003

4 On page 1, line 1 of the title, after "works;" strike the remainder
5 of the title and insert "amending RCW 39.10.020, 39.10.067, 39.08.030,
6 39.30.060, 60.28.011, and 39.10.902; adding a new section to chapter
7 39.10 RCW; and adding new sections to chapter 39.12 RCW."

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